

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALFONSO HERNANDEZ,

Plaintiff,

vs.

No. CV 14-964 KG/SCY

ANDY FITZGERALD,

Defendant.

SPECIAL VERDICT FORM

In response to the following special interrogatories propounded by this Court, we, the jury, make the following answers to which we have, by unanimous decision, agreed:

1. Do you find by a preponderance of the evidence that Defendant Andy Fitzgerald acted "under color" of state or local law?

Yes ☒

No ☐

If you answered "no" to the above Question, you have found in favor of Defendant Andy Fitzgerald on all claims and have now completed the Special Verdict. Your foreperson must sign this Special Verdict, and you will all return to open court. If you answered "yes" to the above Question, please proceed to Question 2.

Excessive Force

2. Do you find by a preponderance of the evidence that Defendant Andy Fitzgerald's use of force was objectively unreasonable under the circumstances?

Yes ☐

No ☒

3. Do you find by a preponderance of the evidence that Plaintiff Alfonso Hernandez suffered an actual, nontrivial injury?

Yes ☐

No ☒

If you answered “no” to either of the above Questions, you have found in favor of Defendant Andy Fitzgerald with regard to Plaintiff’s claim of a Fourth Amendment violation based on Excessive Force. Please proceed to Question 6 and the section entitled “Unlawful Seizure.” If you answered “yes” to both of the above Questions, please proceed to Question 4.

4. Do you find by a preponderance of the evidence that Defendant Andy Fitzgerald’s conduct caused Plaintiff’s actual injury?

Yes _____ No _____

If you answered “no” to the above Question, you have found in favor of Defendant Andy Fitzgerald with regard to Plaintiff’s claim of a Fourth Amendment violation based on Excessive Force. Please proceed to Question 6 and the section entitled “Unlawful Seizure.” If you answered “yes” to the above Question, please proceed to Question 5.

5. In accordance with the damage instructions given by the Court, we award the following compensatory or nominal damages for Plaintiff’s actual injury:

\$ _____

Please proceed to Question 6.

Unlawful Seizure

6. Do you find by a preponderance of the evidence that Defendant Andy Fitzgerald seized Plaintiff Alfonso Hernandez?

Yes _____ No ✓

If you answered “no” to the above Question, you have found in favor of Defendant Andy Fitzgerald with regard to Plaintiff’s claim of a Fourth Amendment violation based on Unlawful Seizure. Please proceed to Question 10. If you answered “yes” to the above Question, please proceed to Question 7.

7. Do you find that Defendant Andy Fitzgerald's seizure of Plaintiff Alfonso Hernandez was unreasonable under the circumstances?

Yes _____

No ✓

If you answered "no" to the above Question, you have found in favor of Defendant Andy Fitzgerald with regard to Plaintiff's claim of a Fourth Amendment violation based on Unlawful Seizure. Please proceed to Question 10. If you answered "yes" to the above Question, please proceed to Question 8.

8. Do you find by a preponderance of the evidence that Plaintiff Alfonso Hernandez suffered an actual, nontrivial injury as a result of the unlawful seizure that is different from the actual, nontrivial injury he suffered as a result of the excessive force, if any?

Yes _____

No _____

If you answered "yes" to the above Question, please proceed to Question 9. If you answered "no" to the above Question, please proceed to Question 10.

9. In accordance with the damage instructions given by the Court, we award the following compensatory or nominal damages for Plaintiff's actual injury:

\$ _____

Please proceed to Question 10.

10. Answer Question 10 only if you answered "yes" to Question 4 and/or Question 7.

Do you find by a preponderance of the evidence that Defendant Andy Fitzgerald's conduct was malicious, willful, reckless, wanton, or in bad faith?

Yes _____

No _____

If you answered "no" to the above question, you have completed the Special Verdict. Your foreperson must sign this Special Verdict, and you will all return to open court. If you answered "yes" to the above Question, please proceed to Question 11.

11. In accordance with the damage instructions given by the Court, we award the following punitive damages to Plaintiff Alfonso Hernandez for Defendant Andy Fitzgerald's violation of Plaintiff's constitutional rights:

\$ 0

You have now completed the Special Verdict. Your foreperson must sign this Special Verdict, and you will all return to open court.

DATED THIS 30th DATE OF May, 2019.


FOREPERSON